

REMARKS/ARGUMENTS

Claims 1, 10-12 and 15-19 are active. Claim 1 is amended to further define that n is 7 (see the specification at page 10), the amount of polymer (from Claim 5), the amount of lipophilic emulsifier from Claim 9, the mol percent of (A) and (B) (from Claim 3) and consistent with the comparative data made of record in the present application.

These changes are consistent with the suggested changes kindly provided by the Examiner during the personal interview held on August 17, 2010 to place the case in a condition for allowance.

Claims 11 and 12 have been withdrawn but have been retained as Applicants reiterate their request for rejoinder upon allowance of the elected composition claims.

No new matter is added.

The Examiner has maintained the obviousness rejection under 35 USC 103(a) citing U.S. Patent No. 6,645,476. The reasons underlying the rejection remain the same and the Examiner continues to maintain that the evidence that has been provided is not commensurate with the scope of the claims. As apparent from the claims submitted in this paper, the claims have been limited to the specific lipophilic emulsifiers that are used in the data with the types of copolymers, for which agreement was believed to be reached during the personal interview discussed above.

To the three specific questions the Examiner raised on page 5 of the Action,

The mole percent of AMPS in the polymer of Example A is 91.5%

R2 is C₁₂H₂₅ in Genapol LA-070

The amount (in terms of active material) of the polymer in example A is 1% by weight and the amount of sucrose tristearate and PEG/PPG 18/18 dimethicone is 0.5 for each.

While it is believed that the rejection is to be withdrawn based on the amendments and the interview, it is noted once again that contrary to the conclusion on page 4 of the Action that it would not have been obvious to use a lipophilic emulsifier in place of the hydrophilic emulsifier to stabilize an oil-in-water emulsion (see present Claim 1) because hydrophilic emulsifiers are known to be appropriate for stabilizing oil-in-water emulsions whereas lipophilic emulsifiers are commonly used to stabilize water-in-oil emulsions.

Indeed, the '476 patent described preferred water-soluble polymers (col. 3, lines 23-67) including AMPS and fatty alcohol polyglycol ethers (e.g., Genapol® LA-070) that are also used in the context of the present application. The '476 patent suggests the possibility of emulsions (including oil-in-water, col. 9, lines 11-15) and the inclusion of coemulsifiers, such as sorbitan esters and others (see col. 9, lines 27-63). However, none of the Examples provided in the '476 patent include a lipophilic emulsifier and the mere suggestion to include a coemulsifier in col. 9, lines 27-63 fails to illustrate the importance of a lipophilic emulsifier as opposed to another type of emulsifier, particularly considering the rather long and general list of other surfactants, which themselves can act as emulsifiers in certain instances.

On page 4 of the above-referenced application, it is stated that "the polymers illustrated in the said document do not produce O/W emulsions with cosmetic properties that are very pleasant for the user while at the same time being very stable and easy to produce." Comparative Examples 1 and 3 in the above-referenced application shows that emulsions containing the polymer as the only emulsifier were not stable.

The '476 patent describes oil-in-water emulsions in Examples 41-43 while the other examples are water-in-oil or water-based compositions. Example 41 includes a hydrophilic co-emulsifier (sodium cocyl glumate) and Examples 42 and 43 contain no co-emulsifiers.

Seeking to solve this problem, the present inventors have found that by carefully selecting the emulsifier and particularly a lipophilic emulsifier from all those that are known

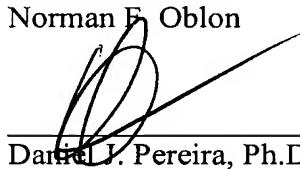
generally in the field, including that taught by the '476 patent, emulsions that are pleasant to the user and remain stable over time and varying temperatures could unexpectedly be obtained (see page 4 of the present application). That the '476 patent teaches very different compositions, with only general disclosure as to what could be included in such very different compositions, there is simply nothing in '476 patent that suggests to the problem underlying the present invention.

Further as has already been discussed and at least, in part, considered by the Office, the present application provides comparative data demonstrating the importance of including a lipophilic emulsifier (see comparative Examples 1 and 3) but not other types of emulsifiers (see comparative Example 2). Even in view of what is described in the '476 patent, that a lipophilic emulsifier (further examples follow) resulted in such a dramatic difference compared to other emulsifiers could not have been reasonably predictable.

Withdrawal of the rejections, rejoinder of the non-elected claims, and a Notice of Allowance is requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman E. Oblon



Daniel J. Pereira, Ph.D.
Attorney of Record
Registration No. 45,518

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/07)